IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3214 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

==========

GUJARAT INDUSTRIAL INVESTMENT CORPORATION LTD - Petitioner

Versus

SHASHIKANT K MEHTA & 10 - Respondents

==========

Appearance :
MR MJ THAKORE, SENIOR ADVOCATE WITH
MS MEGHA JANI for Petitioner.
RULE SERVED BY DS for Respondent Nos. 1, 3, 6, 9.
MR SUNIT S SHAH for Respondent Nos. 2, 5, 7, 10.
MR AMAR N BHATT for Respondent Nos.4.1 to 4.4, 8, 11.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 17/11/2006
ORAL JUDGMENT

1. The petitioner – original plaintiff – Gujarat Industrial Investment Corporation has filed this petition under Article 227 of the Constitution of India seeking permission to continue with Civil Suit No. 2857 of 2004 pending before the City Civil Court, Ahmedabad against the respondents – original defendants. The petitioner has alternatively prayed for a direction staying further proceedings of the application filed by the original defendant Nos. 1,2,5,6,7 & 10 at Exh. 48 and for continuation of the ad-interim relief granted by the learned City Civil Judge, Ahmedabad in Civil Suit No. 2857 of 2004 on 04.11.2004 till the application filed by the petitioner before BIFR seeking permission to proceed with the said suit is heard by BIFR.

2. This Court has admitted the petition and rule was issued on 07.03.2005. The Court has also observed

that if the petitioner applies before the trial Court, the trial Court will proceed with the hearing but shall not pass any final order till this Court makes any further order in the matter.

3. Heard Mr. M.J. Thakore, learned Senior counsel appearing with learned advocate Ms. Megha Jani for the petitioner, Mr. Sunit S. Shah, learned advocate appearing for the respondent Nos. 2,5,7 & 10 and Mr. Amar N. Bhatt, learned advocate appearing for the respondent Nos. 4.1 to 4.4, 8 & 11.

4. It is the case of the petitioner that the petitioner had extended loan facilities to M/s. Saurashtra Paper & Board Mills Limited on various dates from 1990 onwards. While disbursing the said loans, the respondents herein had given joint and several guarantee in favour of the petitioner guaranteeing the repayment and full discharge on demand of all amounts due and payable to the petitioner by Saurashtra Paper & Board Mills under joint and several Guarantee Deeds dated 08.01.1991,

26.08.1996, 04.07.1996 and 05.10.1996. The principal borrower neglected to repay its outstanding dues towards principal and interest to the petitioner. As per the statement of account dated 13.11.2003, the total outstanding due and payable by the principal borrower to the petitioner as on 13.11.2003 would come to Rs.19,16,28,968/-. Since the principal borrower failed and neglected to pay its outstanding dues, the petitioner decided to invoke the guarantee furnished by the respondents and since the guarantors failed and neglected to pay the outstanding amount inspite of the notice, the petitioner filed Civil Suit No. 2857 of 2004 in the City Civil Court at Ahmedabad for a decree of Rs.15,76,90,073/-. The petitioner has also taken out notice of motion praying for interim relief restraining the defendants from transferring, alienating, disposing of or creating any third party rights or part with properties belonging to them. The City Civil Court, Ahmedabad has granted ad-interim relief on 04.11.2004 in terms of para 25-a except defendant Nos. 8 & 11.

5. In the said suit, the defendant Nos. 4.1 to 4.4, 8 & 11 have filed their written statements to the suit inter alia contending that the suit against the guarantors was barred by Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. It was further contended that the principal borrower has made a reference under Section 15 (1) of the SICA before BIFR and the scheme of reconstruction/revival of the Company is yet not finalised by BIFR.

6. In view of pendency of the reference before BIFR, the petitioner has made an application on 27.01.2005 under Section 22 of the Act to continue with Civil Suit No. 2857 of 2004 pending before the City Civil Court, Ahmedabad. The said application is still pending and not decided so far. The defendant Nos. 1,2,5,6,7 & 10 have also filed an application before the City Civil Court, Ahmedabad at Exh. 48 on 27.01.2005 praying that further proceedings of the suit be stayed or suspended till permission from

BIFR is obtained by the petitioner to proceed with the suit.

7. In the above background of the matter, the present petition is filed by the petitioner. Ms. Megha Jani, learned advocate appearing for the petitioner has submitted that since the BIFR was not functioning, mandatory direction was sought for to the Civil Court to proceed with the suit. Mr. Amar N. Bhatt, learned advocate appearing for respondent Nos. 4.1 to 4.4, 8 & 11 submitted that now BIFR is functioning and the relief prayed for in the present petition is of no consequence as the same can also be granted by BIFR. Mr. Sunit Shah, learned advocate appearing for the respondent Nos. 2, 5, 7 and 10 has also submitted that in view of the fact that BIFR is now functioning, the relief prayed for in the present petition can not be granted.

8. After having heard learned advocates appearing for the respective parties and after having gone through the petition, the Court is of the view that since the

BIFR is functioning, the application filed by the present petitioner before BIFR can certainly take care of the relief prayed for by the petitioner. However, since the suit is pending before the City Civil Court, Ahmedabad and interim relief is already granted by the City Civil Court restraining the defendants from transferring, alienating and/or disposing of the properties as indicated above, there is no need to interfere with the said interim order at this stage. The Court is of the view that interest of justice would better be served if the ad-interim relief granted by the City Civil Court in the pending suit while hearing the notice of motion would continue till BIFR decides the application filed by the present petitioner seeking permission to proceed with the suit and till such an application is decided by BIFR, even the application filed by some of the defendants seeking suspension or staying of the proceedings can also be stayed.

9. In the above view of the matter, the Court hereby orders that the ad-interim relief granted by the City

Civil Court, Ahmedabad on 04.11.2004 shall continue till the BIFR decides the application filed by the present petitioner on 27.01.2005 and even the application filed by the respondents – original defendant Nos. 1,2,5,6,7 & 10 at Exh. 48 before the City Civil Court at Ahmedabad on 27.01.2005 is also stayed till BIFR decides the application of the petitioner.

10. It is made clear that the Court has not gone into any other aspects of the matter and it is open for the parties to contest the notice of motion application once BIFR decides the application of the petitioner.

11. With this direction and observation, this petition is accordingly disposed of. Rule is made absolute to the above extent without any order as to costs.

[K.A. PUJ, J.]

Savariya